

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 234**

4 (By Senators Kessler (Acting President) and Hall,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on Finance; reported February 15,
8 2011.]

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11
12 A BILL to amend and reenact §8-38-3, §8-38-4, §8-38-5, §8-38-7,
13 §8-38-10, §8-38-12, §8-38-15, §8-38-16, §8-38-17 and §8-38-20
14 of the Code of West Virginia, 1931, as amended, all relating
15 to revising the Municipal Economic Opportunity Development
16 District Act generally; enlarging the types of municipal
17 corporations that may use sales tax increment financing to
18 finance certain economic development projects to any Class I,
19 Class II and Class III city and any Class IV town or village;
20 including "mining operations" in the definition of
21 "remediation"; including remediation of former coal or other
22 mining sites as a permissible development expenditure for a
23 project; changing the standard by which the maximum amounts of
24 reserves that may be established in the financing of a project
25 are measured; recommending that the Development Office

1 consider whether the economic development that a project
2 enables is large enough to require that it contain mixed-use
3 development consisting of a housing component with at least
4 ten percent of housing units in the district allocated for
5 affordable housing when determining whether there is a
6 pressing need for the project; defining "affordable housing";
7 reducing the amount of capital investment required for project
8 approval; allowing the Development Office to reduce the
9 minimum amount of local sales tax revenues that would be
10 deposited into the state's General Revenue Fund in certain
11 circumstances; providing that the maximum repayment schedule
12 of all notes, bonds or other instruments issued to fund
13 projects is thirty years; and providing technical and clerical
14 cleanup.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §8-38-3, §8-38-4, §8-38-5, §8-38-7, §8-38-10, §8-38-12,
17 §8-38-15, §8-38-16, §8-38-17 and §8-38-20 of the Code of West
18 Virginia, 1931, as amended, be amended and reenacted, all to read
19 as follows:

20 **ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

21 **§8-38-3. Definitions.**

22 For purposes of this article, the term:

23 (1) "Affordable housing" means housing that could be purchased
24 with a cash down payment of at least ten percent and the proceeds
25 of a mortgage loan, the monthly principal and interest payments on

1 which do not exceed thirty percent of the gross monthly income of
2 a household earning one hundred percent of the current median
3 family income, as computed by the United States Department of
4 Housing and Urban Development, for the county in which the district
5 is located. For the purposes of this definition, the monthly
6 principal and interest payments referred to in the preceding
7 sentence are computed using a standard amortization calculation
8 incorporating the prevailing annual rate of interest on mortgage
9 loans offered by financial institutions in the vicinity of the
10 district, as determined by the Development Office at the time of
11 its review of a municipality's application in accordance with
12 section seven of this article, and a thirty year amortization
13 period.

14 ~~(1)~~ (2) "Development expenditures" means payments for
15 governmental functions, programs, activities, facility
16 construction, improvements and other goods and services which a
17 district board is authorized to perform or provide under section
18 five of this article;

19 ~~(2)~~ (3) "District" means an economic opportunity development
20 district created pursuant to this article;

21 ~~(3)~~ (4) "District board" means a district board created
22 pursuant to section ten of this article;

23 ~~(4)~~ (5) "Eligible property" means any taxable or exempt real
24 property located in a district established pursuant to this
25 article;

1 ~~(5)~~ (6) "Municipality" is a word of art and ~~shall mean, for~~
2 ~~the purposes of this article, only~~ means any Class I, and Class II
3 and Class III city or any Class IV town or village as classified in
4 section three, article one of this chapter;

5 ~~(6)~~ (7) "Remediation" means measures undertaken to bring about
6 the reconditioning or restoration of property located within the
7 boundaries of an economic opportunity development district ~~project~~
8 that has been affected by exploration, mining, industrial
9 operations or solid waste disposal and which measures, when
10 undertaken, will eliminate or ameliorate the existing state of the
11 property and enable the property to be commercially developed.

12 **§8-38-4. Authorization to create economic opportunity development**
13 **districts.**

14 A municipality may, in accordance with the procedures and
15 subject to the limitations set forth in this article:

16 (1) Create one or more economic opportunity development
17 districts within its limits;

18 (2) Provide for the administration and financing of
19 development expenditures within the districts; and

20 (3) Provide for the administration and financing of a
21 continuing program of development ~~and redevelopment~~ expenditures
22 within the districts.

23 **§8-38-5. Development expenditures.**

24 Any municipality that has established an economic opportunity
25 development district under this article may make, or authorize to

1 be made by a district board and other public or private parties,
2 development expenditures as will promote the economic vitality of
3 the district and the general welfare of the municipality,
4 including, but not limited to, expenditures for the following
5 purposes:

6 (1) Beautification of the district by means ~~such as~~ including
7 landscaping and construction and erection of fountains, shelters,
8 benches, sculptures, signs, lighting, decorations and similar
9 amenities;

10 (2) Provision of special or additional public services such as
11 sanitation, security for persons and property and the construction
12 and maintenance of public facilities, including, but not limited
13 to, sidewalks, parking lots, parking garages and other public
14 areas;

15 (3) Making payments for principal, interest, issuance costs,
16 any of the costs described in section twenty of this article and
17 appropriate reserves for bonds and other instruments and
18 arrangements issued or entered into by the municipality for
19 financing the expenditures of the district described in this
20 section and to otherwise implement the purposes of this article;

21 (4) Providing financial support for public transportation and
22 vehicle parking facilities open to the general public, whether
23 physically situate within the district's boundaries or on adjacent
24 land;

25 (5) Acquiring, building, demolishing, razing, constructing,

1 repairing, reconstructing, refurbishing, renovating,
2 rehabilitating, expanding, altering, otherwise developing,
3 operating and maintaining real property generally, parking
4 facilities, commercial structures and other capital improvements to
5 real property, fixtures and tangible personal property, whether or
6 not physically situate within the district's boundaries: *Provided,*
7 That the expenditure directly benefits the district;

8 (6) Developing plans for the architectural design of the
9 district and portions thereof and developing plans and programs for
10 the future development of the district;

11 (7) Developing, promoting and supporting community events and
12 activities open to the general public that benefit the district;

13 (8) Providing the administrative costs for a district
14 management program;

15 (9) Providing for the usual and customary maintenance and
16 upkeep of all improvements and amenities in the district as are
17 commercially reasonable and necessary to sustain its economic
18 viability on a permanent basis;

19 (10) Providing any other services that the municipality or
20 district board is authorized to perform and which the municipality
21 does not also perform to the same extent on a countywide basis;

22 (11) Making grants to the owners or tenants of economic
23 opportunity development district for the purposes described in this
24 section;

25 (12) Acquiring an interest in any entity or entities that own

1 any portion of the real property situate in the district and
2 contributing capital to any entity or entities;

3 (13) Remediation of publicly or privately owned landfills,
4 former coal or other mining sites, solid waste facilities or
5 hazardous waste sites to facilitate commercial development which
6 would not otherwise be economically feasible; and

7 (14) To do any and all things necessary, desirable or
8 appropriate to carry out and accomplish the purposes of this
9 article notwithstanding any provision of this code to the contrary.

10 **§8-38-7. Application to Development Office for approval of an**
11 **economic opportunity development district project.**

12 (a) *General.* -- The Development Office shall receive and act
13 on applications filed with it by municipalities pursuant to section
14 six of this article. Each application must include:

15 (1) A true copy of the notice described in section six of this
16 article;

17 (2) The total cost of the project;

18 (3) A reasonable estimate of the number of months needed to
19 complete the project;

20 (4) A general description of the capital improvements,
21 additional or extended services and other proposed development
22 expenditures to be made in the district as part of the project;

23 (5) A description of the proposed method of financing the
24 development expenditures, together with a description of the
25 reserves to be established for financing ongoing development ~~or~~

1 ~~redevelopment~~ expenditures necessary to permanently maintain the
2 optimum economic viability of the district following its inception:

3 *Provided*, That the amounts of the reserves ~~shall~~ may not exceed the
4 amounts that would be required by ~~ordinary~~ prevailing commercial
5 capital market considerations;

6 (6) A description of the sources and anticipated amounts of
7 all financing, including, but not limited to, proceeds from the
8 issuance of any bonds or other instruments, revenues from the
9 special district excise tax and enhanced revenues from property
10 taxes and fees;

11 (7) A description of the financial contribution of the
12 municipality to the funding of development expenditures;

13 (8) Identification of any businesses that the municipality
14 expects to relocate their business locations from the district to
15 another place in the state in connection with the establishment of
16 the district or from another place in this state to the district:

17 *Provided*, That for purposes of this article, any entities shall be
18 designated "relocated entities";

19 (9) Identification of any businesses currently conducting
20 business in the proposed economic opportunity development district
21 that the municipality expects to continue doing business there
22 after the district is created;

23 (10) A good faith estimate of the aggregate amount of
24 consumers sales and service tax that was actually remitted to the
25 Tax Commissioner by all business locations identified as provided

1 in subdivisions (8) and (9) of this subsection with respect to
2 their sales made and services rendered from their then current
3 business locations that will be relocated from, or to, or remain in
4 the district for the twelve full calendar months next preceding the
5 date of the application: *Provided*, That for purposes of this
6 article, the aggregate amount is designated as "the base tax
7 revenue amount";

8 (11) A good faith estimate of the gross annual district tax
9 revenue amount;

10 (12) The proposed application of any surplus from all funding
11 sources to further the objectives of this article;

12 (13) The Tax Commissioner's certification of: (i) The amount
13 of consumers sales and service taxes collected from businesses
14 located in the economic opportunity district during the twelve
15 calendar months preceding the calendar quarter during which the
16 application will be submitted to the Development Office; (ii) the
17 estimated amount of economic opportunity district excise tax that
18 will be collected during the first twelve months after the month in
19 which the Tax Commissioner would first begin to collect that tax;
20 and (iii) the estimated amount of economic opportunity district
21 excise tax that will be collected during the first thirty-six
22 months after the month in which the Tax Commissioner would first
23 begin to collect that tax; and

24 (14) Any additional information the Development Office may
25 require.

1 (b) *Review of applications.* -- The Development Office shall
2 review all project proposals for conformance to statutory and
3 regulatory requirements, the reasonableness of the project's budget
4 and timetable for completion and the following criteria:

5 (1) The quality of the proposed project and how it addresses
6 economic problems in the area in which the project will be located;

7 (2) The merits of the project determined by a cost-benefit
8 analysis that incorporates all costs and benefits, both public and
9 private;

10 (3) Whether the project is supported by significant private
11 sector investment and substantial credible evidence that, but for
12 the existence of sales tax increment financing, the project would
13 not be feasible;

14 (4) Whether the economic opportunity development district
15 excise tax dollars will leverage or be the catalyst for the
16 effective use of private, other local government, state or federal
17 funding that is available;

18 (5) Whether there is substantial and credible evidence that
19 the project is likely to be started and completed in a timely
20 fashion;

21 (6) Whether the project will, directly or indirectly, improve
22 the opportunities in the area where the project will be located for
23 the successful establishment or expansion of other industrial or
24 commercial businesses;

25 (7) Whether the project will, directly or indirectly, assist

1 in the creation of additional long-term employment opportunities in
2 the area and the quality of jobs created in all phases of the
3 project, to include, but not be limited to, wages and benefits;

4 (8) Whether the project will fulfill a pressing need for the
5 area, or part of the area, in which the economic opportunity
6 district is located: Provided, That the Development Office should
7 consider whether the economic development project is large enough
8 to require that it contain a mixed use development provision
9 consisting of a housing component with at least ten percent of
10 housing units in the district allocated for affordable housing;

11 (9) Whether the municipality has a strategy for economic
12 development in the municipality and whether the project is
13 consistent with that strategy;

14 (10) Whether the project helps to diversify the local economy;

15 (11) Whether the project is consistent with the goals of this
16 article;

17 (12) Whether the project is economically and fiscally sound
18 using recognized business standards of finance and accounting; and

19 (13) (A) The ability of the municipality and the project
20 developer or project team to carry out the project: *Provided, That*
21 *no project may be approved by the Development Office unless the*
22 *amount of all development expenditures proposed to be made in the*
23 *first twenty-four months following the creation of the district*
24 *results in capital investment of more than ~~\$50 million~~ \$25 million*
25 *in the district and the municipality submits clear and convincing*

1 information, to the satisfaction of the Development Office, that
2 ~~such~~ the investment will be made if the Development Office approves
3 the project and the Legislature authorizes the municipality to levy
4 an excise tax on sales of goods and services made within the
5 economic opportunity development district as provided in this
6 article.

7 (B) Notwithstanding any provision of paragraph (A) of this
8 subdivision to the contrary, no project involving remediation may
9 be approved by the Development Office unless the amount of all
10 development expenditures proposed to be made in the first
11 forty-eight months following the creation of the district results
12 in capital investment of more than ~~\$50 million~~ \$25 million in the
13 district. In addition to the remaining provisions of paragraph (A)
14 of this subdivision the Development Office may not approve a
15 project involving remediation authorized under section five of this
16 article unless the municipality submits clear and convincing
17 information, to the satisfaction of the Development Office, that
18 the proposed remediation expenditures to be financed by the
19 issuance of bonds or notes pursuant to section sixteen of this
20 article do not constitute more than twenty-five percent of the
21 total ~~redevelopment~~ development expenditures associated with the
22 project.

23 (c) *Additional criteria.* -- The Development Office may
24 establish other criteria for consideration when approving the
25 applications.

1 (d) *Action on the application.* -- The Executive Director of
2 the Development Office shall act to approve or not approve any
3 application within thirty days following the receipt of the
4 application or the receipt of any additional information requested
5 by the Development Office, whichever is the later.

6 (e) *Certification of project.* -- If the Executive Director of
7 the Development Office approves a municipality's economic
8 opportunity district project application, he or she shall issue to
9 the municipality a written certificate evidencing the approval.

10 The certificate shall expressly state a base tax revenue
11 amount, the gross annual district tax revenue amount and the
12 estimated net annual district tax revenue amount which, for
13 purposes of this article, is the difference between the gross
14 annual district tax revenue amount and the base tax revenue amount,
15 all of which the Development Office has determined with respect to
16 the district's application based on any investigation it considers
17 reasonable and necessary, including, but not limited to, any
18 relevant information the Development Office requests from the Tax
19 Commissioner and the Tax Commissioner provides to the Development
20 Office: *Provided,* That in determining the net annual district tax
21 revenue amount, the Development Office may not use a base tax
22 revenue amount less than that amount certified by the Tax
23 Commissioner but, in lieu of confirmation from the Tax Commissioner
24 of the gross annual district tax revenue amount, the Development
25 Office may use the estimate of the gross annual district tax

1 revenue amount provided by the municipality pursuant to subsection
2 (a) of this section.

3 (f) *Certification of enlargement of geographic boundaries of*
4 *previously certified district.* -- If the Executive Director of the
5 Development Office approves a municipality's economic opportunity
6 district project application to expand the geographic boundaries of
7 a previously certified district, he or she shall issue to the
8 municipality a written certificate evidencing the approval.

9 The certificate shall expressly state a base tax revenue
10 amount, the gross annual district tax revenue amount and the
11 estimated net annual district tax revenue amount which, for
12 purposes of this article, is the difference between the gross
13 annual district tax revenue amount and the base tax revenue amount,
14 all of which the Development Office has determined with respect to
15 the district's application based on any investigation it considers
16 reasonable and necessary, including, but not limited to, any
17 relevant information the Development Office requests from the Tax
18 Commissioner and the Tax Commissioner provides to the Development
19 Office: *Provided,* That in determining the net annual district tax
20 revenue amount, the Development Office may not use a base tax
21 revenue amount less than that amount certified by the Tax
22 Commissioner, but, in lieu of confirmation from the Tax
23 Commissioner of the gross annual district tax revenue amount, the
24 Development Office may use the estimate of the gross annual
25 district tax revenue amount provided by the municipality pursuant

1 to subsection (a) of this section.

2 (g) *Promulgation of rules.* -- The Executive Director of the
3 Development Office may promulgate rules to implement the economic
4 opportunity development district project application approval
5 process and to describe the criteria and procedures it has
6 established in connection therewith. These rules are not subject
7 to the provisions of chapter twenty-nine-a of this code but shall
8 be filed with the Secretary of State.

9 **§8-38-10. Ordinance to create district as approved by Development**
10 **Office and authorized by the Legislature.**

11 (a) *General.* -- If an economic opportunity development
12 district project has been approved by the Executive Director of the
13 Development Office and the levying of a special district excise tax
14 for the district has been authorized by the Legislature, all in
15 accordance with this article, the municipality may create the
16 district by ordinance entered of record as provided in article one
17 of this chapter: *Provided,* That the municipality may not amend,
18 alter or change in any manner the boundaries of the economic
19 opportunity development district authorized by the Legislature. In
20 addition to all other requirements, the ordinance shall contain the
21 following:

22 (1) The name of the district and a description of its
23 boundaries;

24 (2) A summary of any proposed services to be provided and

1 capital improvements to be made within the district and a
2 reasonable estimate of any attendant costs;

3 (3) The base and rate of any special district excise tax that
4 may be imposed upon sales by businesses for the privilege of
5 operating within the district, which tax shall be passed on to and
6 paid by the consumer, and the manner in which the taxes will be
7 imposed, administered and collected, all of which shall be in
8 conformity with the requirements of this article; and

9 (4) The district board members' terms, their method of
10 appointment and a general description of the district board's
11 powers and duties, which powers may include the authority:

12 (A) To make and adopt all necessary bylaws and rules for its
13 organization and operations not inconsistent with any applicable
14 laws;

15 (B) To elect its own officers, to appoint committees and to
16 employ and fix compensation for personnel necessary for its
17 operations;

18 (C) To enter into contracts with any person, agency,
19 government entity, agency or instrumentality, firm, partnership,
20 limited partnership, limited liability company or corporation,
21 including both public and private corporations, and for-profit and
22 not-for-profit organizations and generally to do any and all things
23 necessary or convenient for the purpose of promoting, developing
24 and advancing the purposes described in section two of this
25 article;

1 (D) To amend or supplement any contracts or leases or to enter
2 into new, additional or further contracts or leases upon the terms
3 and conditions for consideration and for any term of duration, with
4 or without option of renewal, as agreed upon by the district board
5 and any person, agency, government entity, agency or
6 instrumentality, firm, partnership, limited partnership, limited
7 liability company or corporation;

8 (E) To, unless otherwise provided in, and subject to the
9 provisions of any contracts or leases to operate, repair, manage,
10 and maintain buildings and structures and provide adequate
11 insurance of all types and in connection with the primary use
12 thereof and incidental thereto to provide services, such as retail
13 stores and restaurants, and to effectuate incidental purposes,
14 grant leases, permits, concessions or other authorizations to any
15 person or persons upon the terms and conditions for consideration
16 and for the term of duration as agreed upon by the district board
17 and any person, agency, governmental department, firm or
18 corporation;

19 (F) To delegate any authority given to it by law to any of its
20 officers, committees, agents or employees;

21 (G) To apply for, receive and use grants-in-aid, donations and
22 contributions from any source or sources and to accept and use
23 bequests, devises, gifts and donations from any person, firm or
24 corporation;

25 (H) To acquire real property by gift, purchase or construction

1 or in any other lawful manner and hold title thereto in its own
2 name and to sell, lease or otherwise dispose of all or part of any
3 real property which it may own, either by contract or at public
4 auction, upon the approval by the district board;

5 (I) To purchase or otherwise acquire, own, hold, sell, lease
6 and dispose of all or part of any personal property which it may
7 own, either by contract or at public auction;

8 (J) Pursuant to a determination by the district board that
9 there exists a continuing need for ~~redevelopment~~ development
10 expenditures and that moneys or funds of the district are necessary
11 therefor, to borrow money and execute and deliver the district's
12 negotiable notes and other evidences of indebtedness therefor, on
13 the terms as the district shall determine, and give security
14 therefor as is requisite, including, without limitation, a pledge
15 of the district's rights in its subaccount of the Economic
16 Opportunity Development District Fund;

17 (K) To acquire (either directly or on behalf of the
18 municipality) an interest in any entity or entities that own any
19 real property situate in the district, to contribute capital to any
20 entity or entities and to exercise the rights of an owner with
21 respect thereto; and

22 (L) To expend its funds in the execution of the powers and
23 authority given in this section, which expenditures, by the means
24 authorized in this section, are hereby determined and declared as
25 a matter of legislative finding to be for a public purpose and use,

1 in the public interest and for the general welfare of the people of
2 West Virginia, to alleviate and prevent economic deterioration and
3 to relieve the existing critical condition of unemployment existing
4 within the state.

5 (b) *Additional contents of ordinance.* -- The municipality's
6 ordinance shall also state the general intention of the
7 municipality to develop and increase services and to make capital
8 improvements within the district.

9 (c) *Mailing of certified copies of ordinance.* -- Upon
10 enactment of an ordinance establishing an economic opportunity
11 development district excise tax, a certified copy of the ordinance
12 shall be mailed to the State Auditor, as ex officio the chief
13 inspector and supervisor of public offices, the State Treasurer and
14 the Tax Commissioner.

15 **§8-38-12. Special district excise tax authorized.**

16 (a) *General.* -- The council of a municipality, authorized by
17 the Legislature to levy a special district excise tax for the
18 benefit of an economic opportunity development district, may, by
19 ordinance, impose that tax on the privilege of selling tangible
20 personal property and rendering select services in the district in
21 accordance with this section.

22 (b) *Tax base.* -- The base of a special district excise tax
23 imposed pursuant to this section shall be identical to the base of
24 the consumers sales and service tax imposed pursuant to article
25 fifteen, chapter eleven of this code on sales made and services

1 rendered within the boundaries of the district. Sales of gasoline
2 and special fuel are not subject to special district excise tax,
3 but remain subject to the tax levied by article fifteen, chapter
4 eleven of this code. Except for the exemption provided in section
5 nine-f of ~~said~~ article fifteen, chapter eleven of this code, all
6 exemptions and exceptions from the consumers sales and service tax
7 ~~shall~~ also apply to the special district excise tax.

8 (c) *Tax rate.* -- The rate or rates of a special district
9 excise tax levied pursuant to this section shall be stated in an
10 ordinance enacted by the municipality and identical to the rate or
11 rates of the consumers sales and service tax imposed pursuant to
12 article fifteen, chapter eleven of this code on sales rendered
13 within the boundaries of the district authorized by this section.

14 (d) *Collection by Tax Commissioner.* -- The ordinance of the
15 municipality imposing a special district excise tax shall provide
16 for the tax to be collected by the Tax Commissioner in the same
17 manner as the tax levied by section three, article fifteen, chapter
18 eleven of this code is administered, assessed, collected and
19 enforced.

20 (1) The State Tax Commissioner may require the electronic
21 filing of returns related to the special district excise tax
22 imposed pursuant to this section and may require the electronic
23 payment of the special district excise tax imposed pursuant to this
24 section. The State Tax Commissioner may prescribe by rules
25 ~~promulgated~~ adopted or proposed pursuant to article three, chapter

1 twenty-nine-a of this code, administrative notices, and forms and
2 instructions, the procedures and criteria to be followed to
3 electronically file ~~such~~ those returns and to electronically pay
4 the special district excise tax imposed pursuant to this section.

5 (2) Any rules filed by the State Tax Commissioner relating to
6 the special district excise tax imposed pursuant to this section
7 shall set forth the following:

8 (A) Acceptable indicia of timely payment;

9 (B) Which type of electronic filing method or methods a
10 particular type of taxpayer may or may not use;

11 (C) What type of electronic payment method or methods a
12 particular type of taxpayer may or may not use;

13 (D) What, if any, exceptions are allowable and alternative
14 methods of payment that may be used for any exceptions;

15 (E) Procedures for making voluntary or mandatory electronic
16 payments or both; and

17 (F) Any other provisions necessary to ensure the timely
18 electronic filing of returns related to the special district excise
19 tax and the making of payments electronically of the special
20 district excise tax imposed pursuant to this section.

21 (3) (A) Notwithstanding the provisions of section five-d,
22 article ten, chapter eleven of this code: (i) So long as bonds are
23 outstanding pursuant to this article, the Tax Commissioner shall
24 provide on a monthly basis to the trustee for bonds issued pursuant
25 to this article information on returns submitted pursuant to this

1 article; and (ii) the trustee may share the information so obtained
2 with the ~~county commission~~ municipality that established the
3 economic opportunity development district that issued the bonds
4 pursuant to this article and with the bondholders and with bond
5 counsel for bonds issued pursuant to this article. The Tax
6 Commissioner and the trustee may enter into a written agreement in
7 order to accomplish ~~such~~ exchange of the information.

8 (B) Any confidential information provided pursuant to this
9 subdivision shall be used solely for the protection and enforcement
10 of the rights and remedies of the bondholders of bonds issued
11 pursuant to this article. Any person or entity that is in
12 possession of information disclosed by the Tax Commissioner or
13 shared by the trustee pursuant to subdivision (a) of this
14 subsection is subject to the provisions of section five-d, article
15 ten, chapter eleven of this code as if ~~such~~ the person or entity
16 that is in possession of ~~such~~ the tax information is an officer,
17 employee, agent or representative of this state or of a local or
18 municipal governmental entity or other governmental subdivision.

19 (e) *Deposit of net tax collected.* --

20 (1) The ordinance of the municipality imposing a special
21 district excise tax shall provide that the Tax Commissioner deposit
22 the net amount of tax collected in the special Economic Opportunity
23 Development District Fund to the credit of the municipality's
24 subaccount therein for the economic opportunity development
25 district and that the money in the subaccount may only be used to

1 pay for development expenditures as provided in this article except
2 as provided in subsection (f) of this section.

3 (2) (A) The State Treasurer shall withhold from the
4 municipality's subaccount in the Economic Opportunity Development
5 District Fund and shall deposit in the General Revenue Fund of this
6 state, on or before the twentieth day of each calendar month next
7 following the effective date of a special district excise tax, a
8 sum equal to one twelfth of the base tax revenue amount last
9 certified by the Development Office pursuant to section seven of
10 this article.

11 (B) In addition to the amounts described in paragraph (A) of
12 this subdivision, the Tax Commissioner shall deposit in the General
13 Revenue Fund of this state on the dates specified in paragraph (A)
14 not less than twenty percent nor more than fifty percent of the
15 excess of the special district excise taxes collected during the
16 preceding month above one twelfth of the base tax revenue, said
17 percentage to be fixed by the Development Office in conjunction
18 with its approval of an application in accordance with section
19 seven of this article based on the amount of state funds, if any,
20 to be expended in conjunction with the respective economic
21 opportunity development district project for items including, but
22 not limited to, the acquisition, construction, reconstruction,
23 improvement, enlargement or extension of roadways, rights-of-way,
24 sidewalks, traffic signals, water or sewer lines and other public
25 infrastructure and such other expenditures of state funds

1 identified by the Development Office: Provided, That the
2 Development Office has the discretion to reduce the minimum
3 percentage of the excess special district excise taxes deposited by
4 the Tax Commissioner in the General Revenue Fund as outlined above
5 from twenty percent to ten percent in conjunction with its approval
6 of an application in accordance with section seven of this article
7 based on its determination that:

8 (i) The economic development project provides for expenditures
9 in excess of \$100 million;

10 (ii) The economic opportunity development district project
11 does not require the state to expend any additional state funds for
12 items within the district including, but not limited to, the
13 acquisition, construction, reconstruction, improvement, enlargement
14 or extension of roadways, rights-of-way, sidewalks, traffic
15 signals, water or sewer lines and other public infrastructure; and

16 (iii) The economic development project contains a provision
17 for a mixed use development with a housing component with at least
18 ten percent of housing units in the district allocated as
19 affordable housing.

20 (f) *Effective date of special district excise tax.* -- Any
21 taxes imposed pursuant to the authority of this section ~~shall be~~
22 are effective on the first day of the calendar month that begins at
23 least sixty days after the date of enactment of the ordinance
24 imposing the tax or at any later date expressly designated in the
25 ordinance that begins on the first day of a calendar month.

1 (g) *Copies of ordinance.* -- Upon enactment of an ordinance
2 levying a special district excise tax, a certified copy of the
3 ordinance shall be mailed to the State Auditor, as ex officio the
4 chief inspector and supervisor of public offices, the State
5 Treasurer and the Tax Commissioner.

6 **§8-38-15. Abolishment and dissolution of district; notice;**
7 **hearing.**

8 (a) *General.* -- Except upon the express written consent of the
9 Executive Director of the Development Office and of all the holders
10 or obligees of any indebtedness or other instruments the proceeds
11 of which were applied to any development ~~or redevelopment~~
12 expenditures or any indebtedness, the payment of which is secured
13 by revenues payable into the fund provided under section eight of
14 this article or by any public property, a district may only be
15 abolished by the municipality when there is no outstanding
16 indebtedness the proceeds of which were applied to any development
17 ~~or redevelopment~~ expenditures or the payment of which is secured by
18 revenues payable into the fund provided under section eight of this
19 article, or by any public property, and following a public hearing
20 upon the proposed abolishment.

21 (b) *Notice of public hearing.* -- Notice of the public hearing
22 required by subsection (a) of this section shall be provided by
23 first-class mail to all owners of real property within the district
24 and shall be published as a Class I-0 legal advertisement in

1 compliance with article three, chapter fifty-nine of this code at
2 least twenty days prior to the public hearing.

3 (c) *Transfer of district assets and funds.* -- Upon the
4 abolishment of any economic opportunity development district, any
5 funds or other assets, contractual rights or obligations, claims
6 against holders of indebtedness or other financial benefits,
7 liabilities or obligations existing after full payment has been
8 made on all existing contracts, bonds, notes or other obligations
9 of the district are transferred to and assumed by the municipality.
10 Any funds or other assets transferred shall be used for the benefit
11 of the area included in the district being abolished.

12 (d) *Reinstatement of district.* -- Following abolishment of a
13 district pursuant to this section, its reinstatement requires
14 compliance with all requirements and procedures set forth in this
15 article for the initial development, approval, establishment and
16 creation of an economic opportunity development district.

17 **§8-38-16. Bonds issued to finance economic opportunity development**
18 **district projects.**

19 (a) *General.* -- The municipality that established the economic
20 opportunity development district may issue bonds or notes for the
21 purpose of financing development expenditures, as described in
22 section five of this article, with respect to one or more projects
23 within the economic opportunity development district.

24 (b) *Limited obligations.* -- All bonds and notes issued by a

1 municipality under the authority of this article are limited
2 obligations of the municipality.

3 (c) *Term of obligations.* -- No municipality may issue notes,
4 bonds or other instruments for funding district projects or
5 improvements that exceed a repayment schedule of thirty years.~~—~~
6 ~~Provided, That the maximum repayment schedule of bonds issued to~~
7 ~~finance remediation authorized under section five of this article~~
8 ~~may not exceed twenty years.~~

9 (d) *Debt service.* -- The principal and interest on the bonds
10 ~~shall be~~ is payable out of the funds on deposit in the subaccount
11 established for the economic opportunity development district
12 pursuant to section eight of this article, including, without
13 limitation, any funds derived from the special district excise tax
14 imposed by section twelve of this article or other revenues derived
15 from the economic opportunity development district to the extent
16 pledged for the purpose by the municipality in the ~~resolution~~
17 ordinance authorizing the bonds.

18 (e) *Surplus funds.* -- To the extent that the average daily
19 amount on deposit in the subaccount established for a district
20 pursuant to section eight of this article exceeds, for more than
21 six consecutive calendar months, the sum of: (1) \$100,000; plus
22 (2) the amount required to be kept on deposit pursuant to the
23 documents authorizing, securing or otherwise relating to the bonds
24 or notes issued under this section, then the excess shall be used
25 by the district either to redeem the bonds or notes previously

1 issued or remitted to the General Fund of this state.

2 (f) *Debt not general obligation of municipality.* -- Neither
3 the notes or bonds and any interest coupons issued under the
4 authority of this article shall ever constitute an indebtedness of
5 the municipality issuing the notes or bonds within the meaning of
6 any Constitutional provision or statutory limitation and ~~shall~~
7 ~~never~~ do not constitute or give rise to a pecuniary liability of
8 the municipality issuing the notes or bonds.

9 (g) *Debt not a charge general credit or taxing powers of*
10 *municipality.* -- Neither the bonds or notes, nor interest thereon,
11 is a charge against the general credit or taxing powers of the
12 municipality and that fact shall be plainly stated on the face of
13 each bond or note.

14 (h) *Issuance of bonds or notes.* --

15 (1) Bonds or notes allowed under this section may be executed,
16 issued and delivered at any time and, from time to time, may be in
17 a form and denomination, may be of a tenor, must be negotiable but
18 may be registered as to the principal thereof or as to the
19 principal and interest thereof, may be payable in any amounts and
20 at any time or times, may be payable at any place or places, may
21 bear interest at any rate or rates payable at any place or places
22 and evidenced in any manner and may contain any provisions therein
23 not inconsistent herewith, all as provided in the ordinance of the
24 municipality whereunder the bonds or notes are authorized to be
25 issued.

1 (2) The bonds may be sold by the municipality at public or
2 private sale at, above or below par as the municipality authorizes.

3 (3) Bonds and notes issued pursuant to this article shall be
4 signed by the authorized representative of the municipality and
5 attested by the municipal clerk or recorder and be under the seal
6 of the municipality.

7 (4) Any coupons attached to the bonds shall bear the facsimile
8 signature of the authorized representative of the municipality. ~~In~~
9 ~~case~~ If any of the officials whose signatures appear on the bonds,
10 notes or coupons cease to be officers before the delivery of the
11 bonds or notes, their signatures ~~shall, nevertheless, be~~ are valid
12 and sufficient for all purposes to the same extent as if they had
13 remained in office until the delivery.

14 (i) *Additional bonds or notes.* -- If the proceeds of the bonds
15 or notes, by error of calculation or otherwise, are less than the
16 cost of the economic opportunity development district project, or
17 if additional real or personal property is to be added to the
18 district project or if it is determined that financing is needed
19 for additional development ~~or redevelopment~~ expenditures,
20 additional bonds or notes may, in like manner, be issued to provide
21 the amount of the deficiency or to defray the cost of acquiring or
22 financing any additional real or personal property or development
23 ~~or redevelopment~~ expenditures and, unless otherwise provided in the
24 trust agreement, mortgage or deed of trust, are considered to be of
25 the same issue and ~~shall be~~ are entitled to payment from the same

1 fund, without preference or priority, and ~~shall be~~ are of equal
2 priority as to any security.

3 **§8-38-17. Security for bonds.**

4 (a) *General.* -- Unless the municipality ~~shall~~ otherwise
5 ~~determine~~ determines in the ~~resolution~~ ordinance authorizing the
6 issuance of the bonds or notes under the authority of this article,
7 there is hereby created a statutory lien upon the subaccount
8 created pursuant to section eight of this article and all special
9 district excise tax revenues collected for the benefit of the
10 district pursuant to section eleven-a, article ten, chapter eleven
11 of this code for the purpose of securing the principal of the bonds
12 or notes and the interest thereon.

13 (b) *Security for debt service.* -- The principal of and
14 interest on any bonds or notes issued under the authority of this
15 article shall be secured by a pledge of the special district excise
16 tax revenues derived from the economic opportunity development
17 district project by the municipality issuing the bonds or notes to
18 the extent provided in the ~~resolution~~ ordinance adopted by the
19 municipality authorizing the issuance of the bonds or notes.

20 (c) *Trust indenture.* --

21 (1) In the discretion and at the option of the municipality,
22 the bonds and notes may also be secured by a trust indenture by and
23 between the municipality and a corporate trustee, which may be a
24 trust company or bank having trust powers, within or without the
25 State of West Virginia.

1 (2) The ~~resolution~~ ordinance authorizing the bonds or notes
2 and fixing the details thereof may provide that the trust indenture
3 may contain provisions for the protection and enforcing the rights
4 and remedies of the bondholders as are reasonable and proper, not
5 in violation of law, including covenants setting forth the duties
6 of the municipality in relation to the construction, acquisition or
7 financing of an economic opportunity development district project,
8 or part thereof or an addition thereto, and the improvement,
9 repair, maintenance and insurance thereof and for the custody,
10 safeguarding and application of all moneys and may provide that the
11 economic opportunity development district project shall be
12 constructed and paid for under the supervision and approval of the
13 consulting engineers or architects employed and designated by the
14 municipality or, if directed by the municipality in the ~~resolution~~
15 ordinance, by the district board, and satisfactory to the
16 purchasers of the bonds or notes, their successors, assigns or
17 nominees who may require the security given by any contractor or
18 any depository of the proceeds of the bonds or notes or the
19 revenues received from the district project be satisfactory to the
20 purchasers, their successors, assigns or nominees.

21 (3) The indenture may set forth the rights and remedies of
22 the bondholders, the municipality or trustee and the indenture may
23 provide for accelerating the maturity of the revenue bonds, at the
24 option of the bondholders or the municipality issuing the bonds,
25 upon default in the payment of the amounts due under the bonds.

1 (4) The municipality may also provide by resolution and in the
2 trust indenture for the payment of the proceeds of the sale of the
3 bonds or notes and the revenues from the economic opportunity
4 development district project to any depository it determines, for
5 the custody and investment thereof and for the method of
6 distribution thereof, with safeguards and restrictions it
7 determines to be necessary or advisable for the protection thereof
8 and upon the filing of a certified copy of the resolution or of the
9 indenture for record with the clerk or recorder of the municipality
10 in which the economic opportunity development project is located,
11 the resolution has the same effect, as to notice, as the
12 recordation of a deed of trust or other recordable instrument.

13 (5) In the event that more than one certified resolution or
14 indenture is recorded, the security interest granted by the first
15 recorded resolution or indenture has priority in the same manner as
16 an earlier filed deed of trust except to the extent the earlier
17 recorded resolution or indenture provides otherwise.

18 (d) *Mortgage or deed of trust.* --

19 (1) In addition to or in lieu of the indenture provided in
20 subsection (c) of this section, the principal of and interest on
21 the bonds or notes may, but need not, be secured by a mortgage or
22 deed of trust covering all or any part of the economic opportunity
23 development district project from which the revenues pledged are
24 derived and the same may be secured by an assignment or pledge of
25 the income received from the economic opportunity development

1 district project.

2 (2) The proceedings under which bonds or notes are authorized
3 to be issued, when secured by a mortgage or deed of trust, may
4 contain the same terms, conditions and provisions provided ~~for~~
5 herein when an indenture is entered into between the municipality
6 and a trustee and any mortgage or deed of trust may contain any
7 agreements and provisions customarily contained in instruments
8 securing bonds or notes, including, without limiting the generality
9 of the foregoing, provisions respecting the fixing and collection
10 of revenues from the economic opportunity development district
11 project covered by the proceedings or mortgage, the terms to be
12 incorporated in any lease, sale or financing agreement with respect
13 to the economic opportunity development district project, the
14 improvement, repair, maintenance and insurance of the economic
15 opportunity development district project, the creation and
16 maintenance of special funds from the revenues received from the
17 economic opportunity development district project and the rights
18 and remedies available in event of default to the bondholders or
19 note holders, the municipality, or to the trustee under an
20 agreement, indenture, mortgage or deed of trust, all as the
21 municipality considers advisable and shall not be in conflict with
22 the provisions of this article or any existing law: *Provided*, That
23 in making any agreements or provisions, a municipality shall not
24 have the power to incur original indebtedness by indenture,
25 ordinance, resolution, mortgage or deed of trust except with

1 respect to the economic opportunity development district project
2 and the application of the revenues therefrom and shall not have
3 the power to incur a pecuniary liability or a charge upon its
4 general credit or against its taxing powers unless approved by the
5 voters in accordance with article one, chapter thirteen of this
6 code or as otherwise permitted by the Constitution of this state.

7 (e) *Enforcement of obligations.* --

8 (1) The proceedings authorizing any bonds and any indenture,
9 mortgage or deed of trust securing the bonds may provide that, in
10 the event of default in payment of the principal of or the interest
11 on the bonds, or notes, or in the performance of any agreement
12 contained in the proceedings, indenture, mortgage or deed of trust,
13 payment and performance may be enforced by the appointment of a
14 receiver in equity with power to charge and collect rents or other
15 amounts and to apply the revenues from the economic opportunity
16 development district project in accordance with the proceedings or
17 the provisions of the agreement, indenture, mortgage or deed of
18 trust.

19 (2) Any agreement, indenture, mortgage or deed of trust may
20 provide also that, in the event of default in payment or the
21 violation of any agreement contained in the mortgage or deed of
22 trust, the agreement, indenture, mortgage or deed of trust may be
23 foreclosed either by sale at public outcry or by proceedings in
24 equity and may provide that the holder or holders of any of the
25 bonds secured thereby may become the purchaser at any foreclosure

1 sale, if the highest bidder therefor.

2 (f) *No pecuniary liability.* -- No breach of any agreement,
3 indenture, mortgage or deed of trust ~~shall~~ may impose any pecuniary
4 liability upon a municipality or any charge upon its general credit
5 or against its taxing powers.

6 **§8-38-20. Use of proceeds from sale of bonds.**

7 (a) *General.* -- The proceeds from the sale of any bonds issued
8 under authority of this article shall be applied only for the
9 purpose for which the bonds were issued: *Provided,* That any
10 accrued interest received in any sale shall be applied to the
11 payment of the interest on the bonds sold: *Provided, however,* That
12 if for any reason any portion of the proceeds may not be needed for
13 the purpose for which the bonds were issued, then the unneeded
14 portion of the proceeds may be applied to the purchase of bonds for
15 cancellation or payment of the principal of or the interest on the
16 bonds, or held in reserve for the payment thereof.

17 (b) *Payment of costs.* -- The costs that may be paid with the
18 proceeds of the bonds include all development ~~and redevelopment~~
19 ~~costs~~ expenditures described in section five of this article and
20 may also include, but not be limited to, the following:

21 (1) The cost of acquiring any real estate determined
22 necessary;

23 (2) The actual cost of the construction of any part of an
24 economic opportunity development district project which may be

1 constructed, including architects', engineers', financial or other
2 consultants' and legal fees;

3 (3) The purchase price or rental of any part of an economic
4 opportunity development district project that may be acquired by
5 purchase or lease;

6 (4) All expenses incurred in connection with the
7 authorization, sale and issuance of the bonds to finance the
8 acquisition and the interest on the bonds for a reasonable time
9 prior to construction during construction and for not exceeding
10 twelve months after completion of construction; and

11 (5) Any other costs and expenses reasonably necessary in the
12 establishment and acquisition of an economic opportunity
13 development district project and the financing thereof.

(NOTE: Strike-throughs indicate language that would be
stricken from the present law, and underscoring indicates new
language that would be added.)